

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

BRANNON TAYLOR,)
)
 Petitioner,)
)
 vs.) Case No. 4:16-cv-00643-NKL
) (Crim. Case No. 08-00194-01-CR-W-NKL)
)
 UNITED STATES OF AMERICA,)
)
 Respondent.)

ORDER

In view of the United States Supreme Court's decision in *Johnson v. United States*, 135 S.Ct. 2551 (2015), Brannon Taylor moves under 28 U.S.C. § 2255 to vacate his conviction for use of a firearm during a crime of violence. For the reasons discussed below, the motion to vacate is denied. The Court also denies a certificate of appealability.

I. Introduction

In 2009, Petitioner Brannon Taylor pleaded guilty to one count of carjacking under 18 U.S.C. § 2119, and one count of use of a firearm during a crime of violence, 18 U.S.C. § 924(c)(1)(A), that is, during the carjacking. This Court sentenced him to 125 months of imprisonment on the carjacking count and a consecutive 84 months on the firearm count. Taylor did not appeal his conviction.

A "crime of violence," for purposes of § 924(c)(1)(A), is:

(3) ... an offense that is a felony and—

(A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

(B) that by its nature, involves a substantial risk that physical force against the person or property of another may

be used in the course of committing the offense.

18 U.S.C. § 924(c)(3). The judgment entered against Taylor does not distinguish between the force clause, subsection (A), or the residual clause, subsection (B), of § 924(c)(3). *See* Case No. 08-0194 [Doc. 47].

II. Discussion

Taylor's conviction and sentence are proper if carjacking qualifies as a crime of violence under either the residual clause, § 924(c)(3)(B), or the force clause, § 924(c)(3)(A). Taylor argues the residual clause is unconstitutionally vague in view the Supreme Court's *Johnson v. United States* analysis, and that the underlying crime of carjacking categorically fails to qualify as a crime of violence, so his conviction for use of a firearm during a crime of violence must be vacated.

Taylor contends that § 924(c)(3)(B) is "materially indistinguishable" from the Armed Career Criminal Act (ACCA) residual clause that *Johnson* struck down and asks the Court to declare § 924(c)(3)(B) likewise unconstitutionally vague. [Doc. 4, p. 2]. The Eighth Circuit's recent opinion in *United States v. Prickett* forecloses this argument. *United States v. Prickett*, No. 15-3486, 2016 U.S. App. LEXIS 18032 (8th Cir. Oct. 5, 2016) ("Because several factors distinguish the ACCA residual clause from § 924(c)(3)(B) . . . we join the Second and Sixth Circuits in upholding § 924(c)(3)(B) against a vagueness challenge.") (internal citations omitted).

As a result, Taylor's sentence may be upheld under § 924(c)(3)(B) and the Court need not address Taylor's force clause argument.

III. Certificate of Appealability

A certificate of appealability is issued only “if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The applicant must demonstrate “that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (quotation and citation omitted).

For the reasons discussed above, Taylor has not made a substantial showing of the denial of a constitutional right. Consequently, the Court denies a certificate of appealability.

III. Conclusion

For the foregoing reasons, Petitioner Taylor’s motion to vacate is denied, and a certificate of appealability is denied.

s/ Nanette K. Laughrey
NANETTE K. LAUGHREY
United States District Judge

Dated: October 12, 2016
Jefferson City, Missouri